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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/487,944	01/19/2000	Ronald J. Shannon	CV0283a	3760

7590 12/03/2003  
Bristol-Myers Squibb Company  
100 Headquarters Park Drive  
Skillman, NJ 08558

EXAMINER

ALVAREZ, RAQUEL

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



**Office Action Summary**

Application No.

09/487,944

Applicant(s)

SHANNON, RONALD J.

Examiner

Raquel Alvarez

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-10 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-10 and 13-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_



### DETAILED ACTION

1. This office action is in response to communication filed on 9/22/03.
2. Claims 2 and 11-12 have been canceled. Claims 1, 3-10 and 13-17 are presented for examination.

#### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3-10 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brill et al. (5,299,121 hereinafter Brill) in view of article titled, "Solutions, Wound Care Algorithm Series flip cards" hereinafter Solutions.

With respect to claims 1, 3-6, 8-10, 16-17 Brill teaches a method for identifying a symptom care protocol for a given symptom (see figures 1-4). Classifying the symptom against a defined scale for a first symptom factor to obtain a symptom classification (i.e. classifying the symptoms to obtain the kind of illness)(Figures 1-2C); grading the symptom factors against defined scale (i.e. the level of the symptoms are accessed to determine the type of illness (Figure 2A-2E); a visual decision device corresponding to the symptom classification wherein the visual decision device identifies at least one component of a treatment protocol for the graded symptom factors (col. 3, lines 32-, col. 4, lines 1-68).



Brill does not specifically teach that the symptoms being rated and classified are wounds. On the other hand, Solutions teaches a method of use in identifying and carrying for various wounds. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included in the system of Brill one of the symptoms to be wounds because such a modification would include wound properties and the ability to promote the wound healing process.

With respect to a mechanical device for presenting the visual decision and for classifying the wound, such as sliding cards. The combination of Brill and Solutions teach computerized decisions techniques for presenting and classifying wounds. Manual devices such as sliding cards are well known and commonly used specifically prior to the computer era. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included mechanical devices and sliding cards because such a modification would allow non-computer users to benefit from the use of the system.

Claim 7 further recites an interactive scoring sheet containing a marker associated with one or more of the scores for two or more wound factors identifying an addition to the treatment protocol. The combination of Brill and Solutions teach leveling the wound factors and identifying various treatment protocols and since it is old and well known in the computer related arts to provide interactive displays then it would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included a scoring sheet containing a marker for identifying an addition to the



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treatment protocol because such a modification would allow for a more permanent display such as a scoring sheet marking or showing the additional treatments.

Claims 13-15 further recites a sleeve in which the card slides having at least two openings, the second opening alignable with the second opening. Official notice is taken that a card in which a first and a second openings are alignable in order to match the corresponding information is old and well known. It would have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to have included modifying the combination of Brill and Solutions with a sleeve in which the card slides having at least two openings, the second opening alignable with the second opening in order to obtain the above mentioned advantage.

#### **Response to Arguments**

4. Applicant's arguments filed 9/22/2003 have been fully considered but they are not persuasive.

5. With respect to claims 16-17, a typo occurred.

6. Applicant argues that "motivation to combine the references should come from the references themselves". It is well settled case law that references need not suggest their combination and that motivation to combine can come from knowledge generally available to those of ordinary skill in the art. *In re Fine*, 5 USPQ2d 1596 (CA FC 1988) clearly states that "by showing some objective teaching in the prior art **or that knowledge generally available to one of ordinary skill in the art** would lead that individual to combine the relevant teachings of the references."

7. Applicant also asserts that impermissible hindsight was used by the examiner.



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*In re McLaughlin*, 170 USPQ 209 (CCPA 1971) clearly states that "Any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning, but so long as it takes into account only knowledge which was within level of ordinary skill at time claimed invention was made and **does not include knowledge** gleaned **only from applicant's disclosure**, reconstruction is proper." The examiner asserts that the combination was based on permissible hindsight because the advantages, motivation and recognition of the desirability of treating wounds relied on by the examiner come from knowledge available to those in the art, not from applicant's specification.

8. With regard to the examiner's use of Official Notice, applicant asserts that "there is nothing in the prior art of record" to substantiate the examiner's assertion, but this is not relevant to the use of Official Notice. While applicant may challenge the examiner's use of Official Notice, applicant needs to provide a proper challenge that would at least cast reasonable doubt on the fact taken notice of. See MPEP 2144.03 where *In re Boon* is mentioned. Applicant may do this by asserting that the fact the examiner took notice is incorrect or that the applicant is not aware of the fact taken notice of.

For the above reasons, it is believed that the rejections should be sustained.

**Point of contact**


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (703)305-0456. The examiner can normally be reached on 9:00-5:00.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric w Stamber can be reached on (703)305-8469. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Raquel Alvarez  
Examiner  
Art Unit 3622

R.A.  
11/24/03